IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 16571 of 2004(W)

PETITIONER:

KARTHYANI,
BANGLOW PARAMBIL, SHIPYARD COLONY, GIRINAGAR,
KADAVANTHARA, COCHIN-20. (D I E D).

***ADDL.P2& P3 ARE IMPLEADED:**

P2. V.C.UTHAMAN,
BUNGLOW PARAMBIL,
C/O.PADIKAPARAMBIL,
AROOR, ALAPPUZHA DISTRICT.

P3. V.C.SAMBASIVAN,
KOLLERYPARAMBIL,
MARADU P.O.,
ERNAKUALAM.

(*ADDL.P2 & P3 ARE IMPLEADED AS THE LEGAL HEIRS OF THE ORIGINAL PETITIONER VIDE ORDER DTD. 19/01/2007 IN I.A.17763/06)

BY ADV. SMT.ASHA MOHAN
SRI.SUMESH KUMAR N.C.

..2/-

RESPONDENTS:

** 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (LOCAL AND SELF ADMINISTRATION DEPARTMENT, SECRETARIAT, TRIVANDRUM)

** CORRECTION R1: THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, TRIVANDRUM.

(**R1 CORRECTED AS ABOVE VIDE ORDER DTD. 3/01/2006 IN I.A.NO.19067/2005)

2. THE DISTRICT COLLECTOR, ERNAKULAM.

3. THE SECRETARY,
CORPORATION OF COCHIN.

***ADDL.R4 IS IMPLEADED:

R4. SOUTH GIRINAGAR RESIDENTIAL WELFARE ASSOCIATION, REP. BY ITS SECRETARY A.K.KISHORE, REGD.ER/866/03, KADAVANTHARA P.O., KOCHI – 682 020.

(***ADDL.R4 IS IMPLEADED AS PER ORDER DTD. 2/03/2006 IN I.A.NO.3377/06)

BY ADV. SRI.V.B.HARI NARAYANAN for Addl.R4
SRI.K.ANAND, SC, COCHIN CORPORATION
BY SR.GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.16571/2004 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER OF THE 2ND RESPONDENT NO.C1-12878/71 DTD. 20/05/1971.**

EXT.P2: **COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DTD. 17/09/1999.**

EXT.P3: **COPY OF THE LETTER DTD. 21/11/1999.**

EXT.P4: **COPY OF THE LETTER ISSUED BY THE TAHSILDAR NO.L1-6344/2000 DTD. 14/08/2002.**

EXT.P5: **COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 7/04/2003.**

EXT.P6: **COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT NO.L1 2171/81 DTD. 7/04/2003.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF THE REPORT DTD. 22/01/07.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.16571 of 2004

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Dated: 5th September, 2007

JUDGMENT

This Writ Petition was filed originally by one Karthyani who is the widow of late Chakrapani Velu who had to be evacuated from his kudikidappu for the establishment of Cochin Shipyard. During the pendency of the Writ Petition, the petitioner died and her legal heirs are impleaded as additional petitioners 2 and 3. Her complaint in the Writ Petition was that there was a rehabilitation scheme for rehabilitating 96 kudikidappukars whose lands were acquired for the purpose of Cochin Shipyard and that building No.15 was allotted to her late husband Chakrapani Velu. Her prayer in the Writ Petition is that the third respondent, the Secretary of the Cochin Corporation be directed to hand over to the petitioner vacant possession of House No.15 (obviously the house situated on plot No.15) together with 3.5 cents of land in the Girinagar Shipyard Colony which is covered by Ext.P1 order. Pursuant to a direction issued by this court, the District Collector who is the 2nd respondent filed a detailed affidavit before this court. It is contended therein as follows:

"By order dated 28.06.2006 in W.P.(C) No.16571/04, this Hon'ble Court was directed the District Collector to file a report after

considering the facts of the case and particularly because the Kochi Corporaiton is unable to state, how the petitioner was dispossessed and as to how Ext.P1 came into force. It was further directed to place the report on record within a period of three weeks. Further, on 22.09.2006 an order order was also passed to the same effect. Since the said report as ordered by this Hon'ble Court was not submitted in time a show cause notice dated 19.01.2007 was issued to me asking me to explain as to why the orders dated 28.06.2006 and 22.09.2006 had not been complied with in spite of the instructions in that regard given to me from the office of Advocate General.

It is most respectfully submitted that the said communications issued to me in the above matter from the Advocate General's office, Ernakulam were misplaced during the time of shifting of Collectorate from Community Hall of Thrikkakara Panchayat to renovated Collectorate, Kakkanad. Hence, I could not able to know the above order of the Hon'ble High Court of Kerala and the communications issued to me from the Office of the Advocate General and therefore I was unable to act in time in accordance with the said orders. It is further submitted that after getting copy of the show cause order

notice dated 19.01.2007 earnest efforts have been taken to trace out the orders, communications and the file relating to the case. On going through the contents of the files carefully, I prepared the report and the same is placed herewith on record. A true copy of the report dated 22.01.2007 is produced herewith and marked as Ext.R2(a) and the same be accepted.

It is most respectfully submitted that the delay in filing the said report was neither wilful nor deliberate, but the same was happened due to the above said facts and circumstances. I tender my unconditional apology in not filing the report in time as directed by this Hon'ble Court may be pleased to close the proceedings in the show cause notice dated 19.01.2007 issued to me, in the interest of justice".

2. Heard Mr.Devan Ramachandran, counsel for the petitioners, Mr.K.Anand, Standing Counsel for the Cochin Corporation and Mr.K.J.Mohammed Ansar, learned Government Pleader for respondents 1 and 2.

3. Having regard to the submissions addressed at the Bar and the facts which are discernible from the various materials placed on record, I am of the view that the additional petitioners who are the

legal heirs of the original petitioner are not justified in insisting that plot No.15 in Girinagar Shipyard Colony covered by Ext.P1 together with 3.5 cents of land should be allotted to them. However, considering the stand taken by the Secretary of the Cochin Corporation which is seen endorsed by the District Collector also, this Writ Petition will stand disposed of issuing the following directions:

The Secretary of the Cochin Corporation is directed to put the petitioners in possession of 3 cents vacant land out of 7.15 cents comprising survey Nos.710/1, 714/2 and 715 of Elamkulam Village within Cochin Corporation limits in the very same colony set apart for the construction of Anganavadi vide resolution No.39 dated 22.4.2005 of the Cochin Corporation. The above direction will be implemented by the Secretary of the Corporation at the earliest and at any rate within three months of receiving a copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**